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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney
Tracy Chriss

July 15, 2008

(510) 238-3601
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HONORABLE CITY COUNCIL
Oakland, California

Re: Supplemental Report Recommending Changes to an "Ordinance Prohibiting Retaliation Against Employees Who Act As Whistleblowers."

President De La Fuente and Members of the City Council:

At its July 8, 2008 meeting, the Finance and Management Committee recommended revisions to the above-referenced Ordinance. Specifically, the Committee recommended that the Ordinance be amended to include a definition of the term "adverse employment action" and that Section 8 of the Ordinance, entitled, "Burden of Establishing Retaliation" be modified to more closely resemble the language of San Francisco's Whistleblower Ordinance.

Accordingly, attached for your review and approval is an alternative ordinance that incorporates the recommendations of the Finance and Management Committee.

Very truly yours,

John A. Russo
City Attorney

By: 
Tracy Chriss
Deputy City Attorney

TC:se
cc: City Auditor, Courtney Ruby

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

**ORDINANCE PROHIBITING RETALIATION AGAINST EMPLOYEES
WHO ACT AS WHISTLEBLOWERS**

WHEREAS, the City of Oakland is committed to rooting out waste, fraud and abuse and to maintaining the highest standards of behavior by its officials and employees; and

WHEREAS, the City Auditor maintains a Whistleblower Program for the purpose of receiving individual complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City funds, and improper activities by City officers and employees; and

WHEREAS, the City of Oakland has an interest in protecting the integrity of the City Auditor's Whistleblower Program and City government employees are encouraged to participate in the City Auditor's Whistleblower Program; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

- Section 1 Title and Purpose
- Section 2 Whistleblower Defined
- Section 3 Whistleblower Identity
- Section 4 Retaliation Prohibited
- Section 5 Administrative Complaint of Retaliation
- Section 6 Retaliation Defined
- Section 7 Adverse Employment Action Defined
- Section 8 City Defined
- Section 9 Burden of Establishing Retaliation
- Section 10 Discipline
- Section 11 Civil Penalties

SECTION 1. TITLE AND PURPOSE. This Chapter shall be known as the Whistleblower Ordinance. The purpose of this Ordinance is to protect all City government employees who act as Whistleblowers from retaliation.

SECTION 2: WHISTLEBLOWER DEFINED. Whistleblower is defined as an officer or employee who reports or otherwise brings to the attention of the City Auditor any information which, if true, would constitute one of the following: a work-related violation by a City officer or employee of

any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of authority; a specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office, position or resources for personal gain.

SECTION 3. WHISTLEBLOWER IDENTITY. To the extent permitted by law, the identity of anyone reporting information to the City Auditor about an improper governmental action shall be treated as confidential unless the employee waives his or her confidentiality in writing.

SECTION 4. RETALIATION PROHIBITED. No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a Whistleblower.

No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to cause any adverse employment action as a reprisal against a City officer or employee who acts as a Whistleblower in good faith and with reasonable belief that improper conduct has occurred.

SECTION 5. ADMINISTRATIVE COMPLAINT OF RETALIATION. Any officer or employee who believes that he or she has been subject to an adverse employment action as a result of being a whistleblower may file a complaint of retaliation with the City Auditor within 180 days of the alleged misconduct. The City Auditor shall thereupon investigate the complaint. If the Office of the City Auditor is named in the complaint, the complaint shall be directed to the City Attorney for investigation. The investigation of a retaliation complaint should be completed in eight (8) weeks or less, absent extraordinary circumstances. Any reports regarding retaliation are confidential and not subject to disclosure.

SECTION 6. RETALIATION DEFINED. Retaliation is defined as any adverse employment action, including discharge, discipline or demotion.

SECTION 7. ADVERSE EMPLOYMENT ACTION DEFINED. An adverse employment action requires a showing that the retaliatory action had a detrimental and substantial effect on the terms, conditions, or privileges of a complainant's employment or required the complainant to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a complainant's interests or liking is insufficient.

SECTION 8. CITY DEFINED. City is defined as the City of Oakland, its agencies, departments, boards and commissions.

SECTION 9. BURDEN OF ESTABLISHING RETALIATION. In order to establish retaliation, a complainant must demonstrate by a preponderance of the evidence that the complainant's engagement in activity protected in Section 2 was a substantial motivating factor for the adverse employment action. The supervisor or manager may rebut this claim if he or she demonstrates by a preponderance of the evidence that he or she would have taken the same employment action irrespective of the complainant's participation in Protected activity..

SECTION 10. DISCIPLINE. Any manager, supervisor or employee of the City of Oakland who knowingly engages in conduct prohibited by this Ordinance shall be disciplined, up to and including discharge.

SECTION 11. CIVIL PENALTIES. Any manager, supervisor or employee of the City of Oakland who believes that he or she has been the subject of retaliation in violation of this Ordinance may bring a civil action against the City officer or employee who committed the violation. The civil penalty for such a violation shall not exceed five thousand dollars (\$5,000.00). Such action must be filed no later than one year after the date the manager, supervisor or employee files a complaint of retaliation with the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

08 JUL 10 11:05
INTRODUCED BY COUNCILMEMBER _____

2008 JUL 10 PM 4:31

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

TAL

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